UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte JEFF WASILKO

Appeal No. 2005-2575
Application 09/548,308[1]

HEARD: November 15, 2005

Before JERRY SMITH, BARRETT, and LEVY, Administrative Patent Judges.

BARRETT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) from the final rejection of claims 1-4, 7-9, 14-17, 19, and 20.

We reverse.

[1] Application for patent filed April 12, 2000, entitled "Attenuation, Delay, Queuing, And Message Caching Processes For Use In E-Mail Protocols In Order To Reduce Network Server Loading."

BACKGROUND

The invention is directed to making a network operate more efficiently by moderating the tendency of a user's e-mail client to send out a stream of frequent mail requests to query the user's mail server whether any mail has arrived since the last check. A proxy server intercepts the mail requests and lets the first one proceed to the mail server and delays the subsequent request until a predetermined condition has been satisfied, such as a predetermined period of time.

Claim 1 is reproduced below.

> 1. A method of moderating traffic load on network servers in a network where electronic mail is retained for retrieval from at least one mail server, the method comprising:
>
> permitting a mail request for a mail client to pass through a proxy server to the mail server; and
>
> delaying subsequent mail requests for the mail client at the proxy server until a predetermined condition has been satisfied.

THE REFERENCES

The examiner relies on the following references:

Batchelor	5,278,984	January 11, 1994
Miloslavsky	5,765,033	June 9, 1998
Zerber	5,951,636	September 14, 1999
Wang	5,956,521	September 21, 1999
Toga	5,987,504	November 16, 1999

THE REJECTIONS

Claims 1, 2, 14, and 15 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Zerber and Batchelor.

Claims 3 and 16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Zerber, Batchelor, and Toga.[2]

Claims 4 and 17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Zerber, Batchelor, and Miloslavsky.

Claims 7 and 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Zerber, Batchelor, and Wang.

Claims 8, 9, and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Zerber and Batchelor.

We refer to the final rejection (pages referred to as "FR__") and the examiner's answer (pages referred to as "EA__") for a statement of the examiner's rejection, and to the brief (pages referred to as "Br__") for a statement of appellant's arguments thereagainst.

DISCUSSION

Appellant identifies two groupings of claims: Group 1: claims 1, 2, 4, 7-9, 14, 15, 17, 19, and 20; and Group 2: claims 3 and 16 (Br5). Claim 1 is chosen as representative of Group 1.

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[2] The statement of the rejection in the examiner's answer inadvertently omits Batchelor.

The examiner finds that Zerber teaches "permitting a mail request for a mail client to pass through a proxy server to the mail server" in the abstract, as well as at element 52 in Fig. 3 (FR3 & FR7). The examiner states that "[a]lthough Zerber does not expressly teach the use of 'proxy server,' one of ordinary skill in the art would have recognized that the 'local HTTP server' is equivalent to the 'proxy server' as specified in Applicant's specification because they perform the same function in substantially the same way to reach substantially the same result" (FR7-8). The examiner finds that Zerber does not teach "delaying subsequent mail requests for the mail client at the proxy server until a predetermined condition has been satisfied." The examiner finds that Batchelor teaches queuing and delaying mail requests at a server until a predetermined condition has been satisfied and concludes that it would have been obvious to combine Zerber and Batchelor "in order to prioritize messages so that the sequence of execution and access to resource can be determined, therefore providing optimum performance to the system ([Batchelor] col. 1, lines 27-33)" (FR3).

Appellant argues that Zerber does not mention the use of a proxy server and does not suggest the use of a proxy server to selectively pass or delay e-mail requests (Br6-7). It is argued that the machine 6 in Fig. 1 cannot be interpreted as a distinct proxy server since Zerber indicates that the "post office

system" 4 is implemented ON the machine 6 and the "post office system" 20 of Fig. 2 is implemented ON the server 16 (Br7). It is argued that the "local HTTP server" 52 cannot be interpreted as a distinct server since it is simply a functionality of a JAVA applet running on the user's own machine and not that of a server (Br7). It is argued that the examiner's contention that the HTTP server applet performs the same function as a proxy server in substantially the same way is not accurate because "[s]ince the Zerber applet sets up a continuous connection across the network to the mail sever, it is agnostic to mail requests" (Br8) and because "[t]he Zerber scheme provides a constant live update to the user of what is in the mail folder[] as it exists on the mail server" (Br8), it is not the same function.

The examiner responds that "nowhere in Applicant's claimed invention discloses the 'proxy server' as being a distinct server that is separated from the user's own machine" (EA9) and "Zerber discloses permitting a mail request to pass through the local http server to the mail server ... Therefore, Zerber's 'local http server' is equivalent to Applicant's 'proxy server'" (EA9).

First, we must define terms. A "proxy server" is defined as follows, from http://www.techweb.com:

> Also called a "proxy," it is a computer system or router that breaks the connection between sender and receiver. Functioning as a relay between client and server, proxy servers are used to help prevent an attacker from invading the private network. Proxies are one of several tools used to build a firewall.

> The word proxy means "to act on behalf of another," and a proxy server acts on behalf of the client and the server. All requests from the clients to the Internet go to the proxy server first. The proxy evaluates them, and if allowed, re-establishes the requests on the outbound side to the Internet. Likewise, responses or initial requests coming from the Internet go to the proxy server to be evaluated. The proxy then talks to the client. Both client and server think they are communicating with one another, but, in fact, are dealing only with the proxy.

An "HTTP server" is defined, id.:

> The software that services HTTP requests, which is the protocol of the Web. The term may refer only to the HTTP services in the Web server, or the term can be used as a synonym for "Web server."

The "local HTTP server" 52 in Zerber is shown directly connected through the network 32 to mail server 62, which runs a mail protocol 64 and a post office system 66. The protocol which allows the client computer 34 to communicate with the post office system 66 is maintained in the mail applet 46 (col. 5, lines 19-26). The local HTTP server 52 passes requests for the selected file to the mail applet 46 (step 138 in Fig. 4B; col. 7, lines 12-14) and passes an assembled HTML template to the Web browser 38 to display the view page 44 and selected file (step 152 in Fig. 4B; col. 8, lines 31-35). We agree with the examiner that a system can be a proxy server without being called a proxy specifically. However, there is no teaching or suggestion that the local HTTP server 52 performs the function of a proxy server, and merely passing messages to and from the mail server does not constitute a proxy server. Appellant discloses the proxy server

separate from the client computer and the e-mail server (Fig. 1). Although we agree with the examiner that nothing in the claims necessarily precludes a proxy server from being on the same machine as the client, a proxy server must stand between the client (almost always more than one) and the mail server and here there are only two entities, a client and the mail server, so the local HTTP server 52 in the client cannot be a proxy server. Proxy servers are extremely common, so common that they are often not shown, but they are not inherent. We find that Zerber does not teach a proxy server.

Batchelor also does not disclose a proxy server and cannot cure the deficiency of Zerber. Accordingly, the rejection of claims 1, 2, 14, and 15 is reversed.

Toga, Miloslavsky, and Wang likewise do not cure the deficiency of Zerber and the rejections of claims 3, 4, 7-9, and 16-20 are reversed.

CONCLUSION

The rejections of claims 1-4, 7-9, 14-17, 19, and 20 are reversed.

REVERSED

JERRY SMITH
Administrative Patent Judge

LEE E. BARRETT
Administrative Patent Judge

STUART S. LEVY
Administrative Patent Judge

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